

REMARKS

Claims 1-20 are in the case and subject to a restriction requirement. Applicants hereby elect with traverse to prosecute the claims of Group I, including claims 1-5. Thus, claims 6-20 are withdrawn from consideration. Reconsideration is requested.

However, restriction is not required by 35 U.S.C. § 121. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted..." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

1. The invention must be independent or distinct; and
2. There must be a ***serious burden*** on the examiner if restriction is not required, *even if there are independent and distinct inventions present*.

In the present application, the inventions delineated by the claims might well be independent and distinct. However, In searching the Group I claims, the class and subclass for the Groups II, III, and IV claims will undoubtedly be searched, to ensure that no relevant art is overlooked. Further, the examiner will undoubtedly use electronic search methods to find the prior art. Thus, even if the claims cover material that is found in separate classifications, there is no burden to search these separate classifications using electronic methods. Typically, the examiner will need to search multiple classifications anyway, to ensure that no relevant art is overlooked. In the present case, the search for the Group I claims is likely to result in finding art pertinent to the Groups II, III, and IV claims, and vice versa.

In addition, even if there is ***some*** additional burden on the examiner in searching the additional classifications, the number of claims in the present application is not great, and thus there certainly is no ***serious*** burden in searching the relevant classifications. Further yet, the claims are all directed to art that is extremely related, and do not require searching classifications that are significantly different, one from another. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP § 803, in keeping the claims together.

Further, in maintaining the restriction, the examiner is locking the Patent Office into the position that the four groups of claims are patentable over each other, as provided by MPEP 802.01. Thus, if the restriction is maintained and all four sets of claims are eventually allowed, the patents could not be cited against one another under either statutory double-patenting or the judicially created doctrine of double-patenting, and no terminal disclaimer could be required. Taking such a definitive position should be carefully weighed before the restriction requirement is maintained for a mere matter of convenience at this point in time.


In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions. Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement.

In light of the foregoing, applicants respectfully submit that a full and complete response to the office action is provided herein, and request that the application proceed to examination.

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time. If any fees are required by this response, such fees may be charged to deposit account **12-2355**.

Sincerely,

LUEDEKA, NEELY & GRAHAM, P.C.

By: 

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